

### REMARKS

Applicants acknowledge receipt of an Office Action dated June 15, 2007. With this response, Applicants are submitting new Figure 8 which depicts the subject matter of originally filed claims 38 and 39. Applicants have amended the Specification to include a brief description of Figure 8 and to incorporate reference numerals where appropriate. Applicants are also submitting a replacement Abstract to correct minor informalities noted by the PTO.

In addition, in this response, Applicants have cancelled claims 28 and 33 without prejudice or disclaimer and have incorporated the subject matter of these claims into claim 1. Applicants have amended claims 1-27, 29-32, 34-43 to present them in a more conventional format for U.S. patent practice by, *inter alia*, replacing the phrase “characterized in that” with the term “wherein,” to remove extraneous “in particular” phrases, and to break out preferred ranges into separate dependent claims (43-51). Following entry of these amendments, claims 1-27, 29-32, and 34-51 are pending in the application.

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

#### **Objection to the Drawings**

On page 2 of the Office Action, the PTO has objected to the drawings as allegedly failing to disclose every feature of the invention specified in the claims. With this response, Applicants are submitting a new drawing sheet with new Figure 8 which depicts air flow paths 81, 82, air flow control elements 83, an air delivery device 84, a condenser 85, a housing for receiving an apparatus for heat exchange 86, a compressor 87, an expansion valve 88, and a collector 89. In addition, Applicants have amended the specification to include a brief description of Figure 8 and to incorporate reference numerals where appropriate. In view of the foregoing, reconsideration and withdrawal of the outstanding objection to the drawings.

#### **Objection to the Specification**

On page 3 of the Office Action, the PTO has objected to the Specification and has suggested that Applicants amend the Abstract. With this response, Applicants are submitting

a replacement Abstract which obviates the issues raised by the PTO by, *inter alia*, removing all references to “the invention.” Applicants respectfully request reconsideration and withdrawal of the outstanding objection to the Specification.

**Rejection Under 35 U.S.C. § 112, 2<sup>nd</sup> Paragraph**

On page 4 of the Office Action, the PTO has rejected claims 10, 23, 32 and 42 under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph as allegedly being indefinite. Applicants respectfully traverse this rejection.

In this response, Applicants have broken out the ranges within ranges recited in claims 10, 23, 32, and 42 and have presented these preferred sub-ranges in dependent claims 43-50.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under § 112.

**Rejection Under 35 U.S.C. § 102**

On page 5 of the Office Action, the PTO has rejected claims 1-31, 33-37, and 40-43 under 35 U.S.C. § 102(b) as allegedly being anticipated by FR 2393013 to Carlos (hereafter “Carlos”). Applicants traverse this rejection for the reason set forth below.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally MPEP § 2131.

Here, Carlos fails to disclose an apparatus for heat exchange “wherein at least one space section of the distribution space is flow-connected to at least one space section of the collection space by at least one connection device , wherein a separating device is arranged in such a manner that medium flows firstly through a first section, remote from the air flowing through, then through a section facing the air flowing through, then back through a section remote from the air flowing through and finally back through a section facing the air flowing through, and wherein there is at least one separating device dividing the collection space and/or the distribution space into at least two space sections in a gas-tight and fluid-tight manner and the at least one separating device comprises two separating walls with one of the separating walls being arranged at a right angle and with an opening” as recited in

independent claim 1. Thus, Applicants submit that the outstanding rejection under §102 does not properly apply to amended claim 1 and ought to be withdrawn.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under § 102.

### **Rejection Under 35 U.S.C. § 103**

On page 11 of the Office Action, the PTO has rejected claims 38-39 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Carlos in view of U.S. Patent 3,602,295 to Klass (hereafter “Klass”). Applicants traverse this rejection for the reasons set forth below.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, prior art references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants’ disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Here, Carlos and Klass, whether taken individually or in combination, fail to teach or suggest an apparatus for heat exchange “wherein at least one space section of the distribution space is flow-connected to at least one space section of the collection space by at least one connection device , wherein a separating device is arranged in such a manner that medium flows firstly through a first section, remote from the air flowing through, then through a section facing the air flowing through, then back through a section remote from the air flowing through and finally back through a section facing the air flowing through, and wherein there is at least one separating device dividing the collection space and/or the distribution space into at least two space sections in a gas-tight and fluid-tight manner and the at least one separating device comprises two separating walls with one of the separating walls being arranged at a right angle and with an opening”.

Applicants note that Klass has been cited for allegedly teaching air flow control elements, air flow paths, an air delivery device, and a housing. Klass, however, adds nothing to resolve the fundamental deficiencies in Carlos.

Thus, Applicants submit that the outstanding rejection based upon the combination of Carlos and Klass is improper and ought to be withdrawn.

If an independent claim is nonobvious under § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). See MPEP 2143.03. Thus, Applicants submit that claims 38 and 39, each of which ultimately depends from independent claim 1, are also non-obvious at least by virtue of their dependency from independent claim 1.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the outstanding rejection under § 103.

### CONCLUSION


Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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